



## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

**[Docket Number MARAD-2014-0132]**

#### **Deepwater Ports License Application Process for Offshore Export Facilities**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice of proposed policy.

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**SUMMARY:** The Maritime Administration (MARAD) is seeking public comment on the agency's proposed policy to accept, evaluate and process license applications for the construction and operation of offshore deepwater port facilities for the export of oil and natural gas from the United States to foreign markets abroad, and to use the existing Deepwater Port License regulations, cited at 33 CFR Parts 148, 149 and 150 for such purposes.

**DATES:** Written public comments regarding this notice of proposed policy should be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2014-0132 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search MARAD-2014-0132 and follow the instructions for submitting comments.
- E-mail: [Rulemakings.MARAD@dot.gov](mailto:Rulemakings.MARAD@dot.gov). Include MARAD-2014-0132 in the subject line of the message.
- Fax: (202) 493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. If you would like to confirm that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- Hand Delivery/Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you fax, mail or hand deliver your input, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that you can be contacted if there are questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing.

*Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled **Public Participation**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, telephone: 202-366-0926, email: [Yvette.Fields@dot.gov](mailto:Yvette.Fields@dot.gov). If you have questions on viewing the Docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202-493-0402.

**SUPPLEMENTARY INFORMATION:** On December 20, 2012, the Coast Guard and Maritime Transportation Act of 2012 (Title III, Sec. 312) amended Section 3(9)(A) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(9)(A)) to insert the words “or from” before the words “any State” in the definition of Deepwater Port. This amendment grants MARAD, as delegated by the Secretary of Transportation, the authority to license the construction and operation of Deepwater Ports for the export of oil and natural gas from domestic sources within the United States.<sup>1</sup> This amendment will be implemented in accordance with existing legislative and regulatory requirements pertaining to the Deepwater Port Act of 1974, as amended (the Act). The Coast Guard and Maritime Transportation Act of 2012 provided no other amendments to the Act.

The amended Act defines a Deepwater Port, in part, as “any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State ....”

The Act grants the Maritime Administrator authority to license Deepwater Ports (by delegation from the Secretary of Transportation, published on August 17, 2012 [77 FR 49964]). Deepwater Port license applications are jointly processed by MARAD and the U.S. Coast Guard (Coast Guard) under delegations from, and between, the Secretary of Transportation and the Secretary of Homeland Security. In general, the Coast Guard is the lead agency for compliance with the National Environmental Policy Act and is

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<sup>1</sup> With regard to exports from a State that are intended for non-United States markets, the Department of Energy is responsible for approving applications to export natural gas to Free Trade Agreement and Non-Free Trade Agreement nations. As a general proposition, the export of oil from the United States is restricted (see e.g., the Energy Policy and Conservation Act of 1975 or the Export Administration Act of 1979).

responsible for matters related to navigation safety, engineering and safety standards, and facility inspections. MARAD is responsible for determining citizenship and financial capability of the potential licensees, and for preparing the project Record of Decision and issuing or denying the license. The various other responsibilities under the Act, including the duty of consultation, are shared by the Coast Guard and MARAD. Statutory and regulatory requirements for Deepwater Port licensing appear in 33 U.S.C. 1501 *et seq.* and in 33 CFR Parts 148, 149 and 150.

The Coast Guard has previously developed comprehensive regulatory guidance for Deepwater Port license applications and remains the Federal agency responsible for the promulgation of rules relating to the Deepwater Port license application process. Regulations detailing the requirements of the Deepwater Port license application process; design, construction and equipment; and port operations can be found in 33 CFR Parts 148, 149 and 150. These regulations pertain to the application review process, planning, environmental review, design, construction and operation of deepwater port facilities without specific regard to whether the facility imports or exports oil and/or natural gas products. With the addition of oil and natural gas exportation under the amendment to the Act, MARAD does not foresee any reason to alter the Deepwater Port licensing application process. As such, this notice is provided to inform the public that MARAD, with the concurrence of the Coast Guard's Deepwater Ports Standards Division, intends to use the existing Deepwater Port regulations for the review, evaluation and processing of any Deepwater Port license application involving the export of oil or natural gas from domestic sources within the United States as provided for in 33 CFR Part 148, 149 and 150.

Any proposed Deepwater Port involving the export of oil or natural gas from domestic sources within the United States will require the submission of an export-specific comprehensive license application conforming to all established and applicable Deepwater Port licensing requirements and regulations. The considerable technical, operational and environmental differences between import and export operations for oil or natural gas projects are such that any licensed Deepwater Port facility, or any proponent of a deepwater port that has an application in process, that proposes to convert from import to export operations will be required to submit a new license application (including application fee) and conform to all licensing requirements and regulations in effect at such time of application. For licensed deepwater ports, an application to convert from import operations to export operations will require, at a minimum: 1) approval from the Department of Energy or other approval authority to export oil or natural gas to free trade and/or non-free trade agreement countries; 2) a new or supplemental environmental impact analysis (Environmental Impact Statement or Environmental Assessment – Finding of No Significant Impact) pursuant to the National Environmental Policy Act that assesses the significance of the environmental impact of the proposed change in operations; and 3) a revised operations manual that fully describes the proposed change in port operations. Only after all required application processes are completed, and after consideration of the nine factors specified in the Act (33 U.S.C. 1503(c)), may the Maritime Administrator approve (or disapprove) an application to export oil or natural gas through a deepwater port. In the event the Maritime Administrator approves the application to convert to export operations, the applicant's existing license shall be surrendered and the Maritime Administrator will issue a new license with conditions

appropriate to all intended activities, including, if applicable, authority to engage in bidirectional oil or natural gas import and export operations. In all other cases, the Maritime Administrator will issue a new license with conditions appropriate to the applied for activity.

This proposed policy will take effect upon the date of the final Federal Register Notice of Policy and will remain in effect until such time that additional or other related regulations are promulgated. As previously stated, all statutory provisions of the Deepwater Port Act of 1974, as amended, shall apply to the final authorization and licensure of export oil and natural gas Deepwater Ports.

### **Public Participation**

Your comments must be written and provided in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue, SE, Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final policy (assuming one is issued), MARAD will consider that comment as an informal suggestion for future policy action.

For access to the docket to read background documents, including those referenced in this document, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at <http://www.regulations.gov>, keyword search MARAD-2014-0132.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

### **Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the Federal Register published on January 17, 2008, (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

(Authority 49 CFR 1.93)

Dated: October 10, 2014.

By Order of the Maritime Administrator

Thomas M. Hudson,  
Secretary, Maritime Administration.

**BILLING CODE:** 4910-81-P

[FR Doc. 2014-24609 Filed 10/15/2014 at 8:45 am; Publication Date: 10/16/2014]